Chen Sook Peng lwn Wee Phean Yung

MAHKAMAH TINGGI (IPOH) — SAMAN PEMULA NO 24–695 TAHUN 2003
VT SINGHAM H
27 OKTOBER 2003

Undang-Undang Keluarga — Penceraian — Nafkah — Suami memohon bahagian daripada hasil jualan rumah perkahwinan — Sama ada suami berhak mengkaveat rumah perkahwinan — Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ss 76 & 77(1)

Undang-Undang Tanah — Sekatan urusan — Kaveat — Permohonan untuk membatalkan — Prosedur yang patut dipakai oleh mahkamah — Sama ada responden boleh membuktikan bahawa beliau mempunyai kepentingan yang boleh dikaveatkan atas tanah apabila memasuki kaveat — Sama ada pemohon pihak terkilan dan berhak memohon kepada mahkamah untuk pembatalan kaveat defendan — Kanun Tanah Negara s 327(1)

Undang-Undang Tanah — Sekatan urusan — Kaveat — Kepentingan yang boleh dikaveatkan — Kegagalan untuk menyatakan sepenuhnya sifat tuntutan membentuk asas permohonan — Sama ada kaveat patut dibatalkan — Sama ada kaveat boleh bergantung kepada alasan tambahan yang tidak dinyatakan dalam permohonan untuk memasukkan kaveat — Kanun Tanah Negara s 323(2), (3), Borang 19B

Undang-Undang Tanah — Sekatan urusan — Kaveat — Kepentingan kaveat — Tiada persoalan penting yang perlu dibicarakan — Imbangan kesesuaian — Status quo — Kanun Tanah Negara ss 323 & 327

Undang-Undang Tanah — Sekatan urusan — Kaveat — Pembatalan — Suami mengkaveatkan tanah isteri — Suami menuntut hak kepada harta awam atas nama isteri — Sama ada suami mempunyai kepentingan yang boleh dikaveatkan — Sementara menunggu petisyen perceraian, sama ada melindungi suami dengan kepentingan yang boleh dikaveatkan atas tanah

Responden dan pemohon adalah pasangan suami isteri yang menjadi pemegang syer sama rata sebuah syarikat pengangkutan. Suami, sebagai responden, mendakwa bahawa, hasil usaha pendapatan syarikat tersebut, sebuah rumah di Chemor, Perak ('harta tersebut') telah dibeli atas nama pemohon. Malahan responden mendakwa telah membuat tiga daripada bayaran ansuran ke atas harga pembelian harta tersebut. Setelah wujudnya masalah rumahtangga, responden telah dihalau keluar daripada harta tersebut. Pemohon telah memfailkan prosiding untuk perceraian dan responden percaya dia berhak kepada sebahagian harta tersebut di bawah undang-undang perceraian. Responden, mendakwa mempunyai hak sama rata di atas harta tersebut dan harta tersebut akan dijual tanpa pengetahuannya, telah memasukkan suatu kaveat persendirian ke atas harta tersebut. Isteri, sebagai pemohon dan pemilik berdaftar harta tersebut, menafikan responden mempunyai sebarang kepentingan ataupun hak undang-undang mahupun benefisial terhadap harta tersebut. Pemohon memohon agar kaveat persendirian yang dimasukkan responden itu dibatalkan dan responden dikenakan bayaran ganti rugi dan kos.

Diputuskan, membenarkan permohonan tersebut:

(1) Dalam kes ini, pemohon adalah seorang yang terkilan, 'an aggrieved person', seperti yang ditafsirkan dalam undang-undang dan mengikut s 327(1) Kanun Tanah Negara dan pemohon berhak untuk membuat permohonan ini untuk membatalkan kaveat yang difailkan oleh responden. Maka adalah menjadi tugas responden menunjukkan bahawa beliau mempunyai kepentingan untuk dipelihara dengan memasukkan kaveat di atas harta tersebut (lihat perenggan-perenggan 11–12); *Wu Shu Chen (Sole Executrix of the Estate of Goh Keng How, decd) & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 478 dan *Attorney General of the Gambia v N'Jie* [1961] All ER 504 diikut, *Soon Seng Co Sdn Bhd v Toko Palayakat Jamal (M) Sdn Bhd* [1999] 5 MLJ 75 dirujuk.

(2) Alasan bahawa responden telah dinasihati oleh peguamcaranya dan percaya bahawa pemohon memegang ½ bahagian di atas harta tersebut dalam amanah untuk responden tidak dinyatakan di surat akuan menyokong permohonan untuk memfailkan kaveat Borang 19B ataupun di afidavit jawapan pertama responden yang diikrarkan. Ini dengan jelas menunjukkan responden di peringkat akhir-akhir cuba membangkitkan isu amanah di mana alasan seperti itu yang memang penting untuk memfailkan satu kaveat persendirian. Sekiranya kenyataan amanah tersebut adalah benar-benar timbul dan ada dalam pengetahuan responden sendiri di atas harta tersebut perkara ini harus dinyatakan sama sekali sama ada di surat akuan untuk menyokong borang kaveat ataupun di afidavit jawapan pertama bagi responden. Responden ada membangkitkan pelbagai alasan dan fakta melalui afidavit-afidavit beliau yang tidak selaras dan bercanggah dengan alasan yang dinyatakan dalam surat akuan dan borang kaveat (lihat perenggan 16); *Wong Kuan Tan v Gambut Development Sdn Bhd* [1984] 2 MLJ 113, *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189, *Goh Paik Swan v Ng Choo Lum* [1996] 3 MLJ 437, *Rajinder Kaur v Jeswant Singh* [1987] 1 MLJ 214 dan *Goh Keng How v Raja Zainal Abidin bin Raja Hussin & Anor* [1995] 3 MLJ 6 dirujuk.

(3) Hanya tiga pembayaran ansuran berjumlah RM5,821.83 sahaja yang dibuat oleh responden. Ini tidak semestinya memberi sebahagian kepentingan atau hak ke atas harta tersebut kepada responden apabila berbanding dengan harga harta tersebut yang dikatakan responden dalam lingkungan RM400,000. Ia sekadar membenarkan responden membawa satu tuntutan untuk mengembalikan wang sebanyak RM5,821.83 tersebut atau sebarang kerugian yang ditaksirkan. Malah perkara tentang tiga pembayaran tersebut langsung tidak dinyatakan di surat akuan untuk menyokong permohonan untuk memasukkan kaveat persendirian (lihat perenggan 23); *Goo Hee Sing lwn Will Raja & Anor* [1993] 3 MLJ 610, *Eng Mee Yong v V Letchumanan* [1979] 2 MLJ 212, *Syed Ibrahim bin Syed Abdul Rahman v Liew Su Chin (F)* [1984] 1 MLJ 160, *Rajinder Kaur v Jeswant Singh* [1987] 1 MLJ 214 dan *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719 dirujuk.

(4) Walaupun s 76 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 memberi budi bicara kepada mahkamah menentukan atau memerintahkan pembahagian harta-harta yang diperolehi di atas usahasama suami-isteri, ini adalah bergantung dan tertakluk kepada berapakah sumbangan yang diberi oleh kedua-dua pihak atau masing-masing. Sekiranya responden berjaya, dalam tindakan perceraian, tentang tuntutan beliau untuk hak sebahagian harta tersebut di atas sumbangan yang telah diberikannya, perkara itu tidak secara terus memberi hak kepentingan untuk memasukkan kaveat di atas harta tersebut. Ini adalah kerana responden boleh diberi pampasan nilai wang selepas ditentukan jumlah wang yang disumbangkannya. Sebarang keputusan atau perintah yang bakal di buat dalam petisyen perceraian adalah di atas budi bicara mahkamah (lihat perenggan 32); *Re Heng Peng Hoo & Anor* [1989] 3 MLJ 103, *Lee Yu Lan v Lim Thain Chye* [1984] 1 MLJ 56 dan *Leake v Bruzzi* [1974] 1 WLR 1528 dirujuk.

(5) Mahkamah ini seharusnya meneliti dan menimbang alasan atau alasan-alasan yang dinyatakan dalam permohonan untuk masukkan kaveat (Borang 19B). Mahkamah ini tidak sepatutnya menimbang sebarang perkara-perkara luaran (extraneous material) yang dikemukakan selain daripada alasan-alasan yang dinyatakan dalam borang untuk memasukkan kaveat. Kebanyakkan perkara-perkara yang dibangkitkan oleh responden di afidavit-afidavit beliau hanya mengaburi pertimbangan keadilan dan mengelakkan mahkamah ini daripada menimbang fakta-fakta yang relevan bagi maksud permohonan ini. Selepas meneliti secara menyeluruh fakta-fakta, keadaan dan situasi kes ini dan khususnya alasan yang digunakan oleh responden untuk memasukkan kaveat tersebut, responden didapati tidak menunjukkan alasan yang mencukupi untuk mengekalkan kaveat tersebut (lihat perenggan-perenggan 34, 36); *Abdul Rahim bin Aki v Krubong Industrial Park (Melaka) Sdn Bhd & Ors* [1995] 3 MLJ 417, *United Malayan Banking Corporation Bhd v Development and Commercial Bank (Ltd) Bhd* [1983] 1 MLJ 165, *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782 dan *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719) dirujuk.

(6) Kes-kes yang dirujuk oleh peguam responden mengenai bahagian hak suami isteri di atas harta perkahwinan adalah kes-kes Singapura yang difailkan di bawah s 55 Women's Charter Cap 57 Singapura dan yang telah diputuskan selepas perbicaraan penuh di atas fakta-fakta dalam kes-kes itu. Keputusan dalam kes-kes tersebut tidak mengaitkan isu sama ada responden dapat memfailkan kaveat persendirian ke atas harta tersebut dan mengekalkan kaveat tersebut tanpa menunjukkan alasan yang kukuh bahawa responden mempunyai kepentingan untuk memasukkan kaveat tersebut. Kes-kes tersebut tidak membantu responden untuk mengekalkan kaveat persendirian tersebut (lihat perenggan 38); *Nagapushani v Nesaratnam & Anor* [1970] 2 MLJ 8, *Evelyn Tan v Tan Lim Tai* [1973] 2 MLJ 92 dan *Lau Choong Choo v Chou We Chuan* [1980] 1 MLJ 6 dibezakan.

[**English summary**

The respondent dan the applicant were husband and wife and equal shareholders in a transport company. The husband, as respondent, alleged that from the profits of the transport company, a house was purchased in Chemor, Perak ("the said property") in the name of the applicant. However the respondent allegedly made three instalment payments towards the purchase price of the said property. When domestic problems arose, the respondent was evicted from the the said property. The applicant had filed divorce proceedings and the respondent believed he was entitled to a share of the the said property under the divorce laws. The respondent, claiming an equal share of the said property and fearing the said property would be sold without his knowledge, entered a caveat on the said property. The wife, as applicant and the registered owner, denied the respondent had any legal or beneficial right or interest to the said property. The applicant sought to have the private caveat entered by the respondent cancelled and for the respondent to pay damages and costs.

Held, allowing the application:

(1) In this case, the applicant was 'an aggrieved person', as provided for in the law and under s 327(1) of the National Land Code and the applicant was entitled to make this application to cancel the caveat filed by the respondent. It was then for the respondent to show that he had an interest to protect by the entry of a caveat on the said property (see paras 11–12); *Wu Shu Chen (Sole Executrix of the Estate of Goh Keng How, decd) & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 478 and *Attorney General of the Gambia v N'Jie* [1961] All ER 504 followed. *Soon Seng Company Sdn Bhd v Toko Palayakat Jamal (M) Sdn Bhd* [1999] 5 MLJ 75 referred.

(2) The argument that the respondent had been advised by his solicitors and believed that the applicant held ½ share in the said property in trust for him was not stated anywhere in the statutory declaration in support of his application for the entry of the caveat Form 19B or even in the first affiavit in reply affirmed by the respondent. This clearly showed the respondent was in the final stages seeking to raise issues of trust when this important allegation was important in filing the private caveat. If the question of a trust of the said property, to the knowledge of the respondent, did arise, this fact ought to be expressly stated in the statutory declaration in support of the caveat form or in the first affidavit in reply of the respondent. The respondent had raised several issues and facts in his various affidavits but these were inconsistent with and conflicted with the grounds stated in the statutory declaration and the caveat form (see para 16); *Wong Kuan Tan v Gambut Development Sdn Bhd* [1984] 2 MLJ 113, *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189, *Goh Paik Swan v Ng Choo Lum* [1996] 3 MLJ 437, *Rajinder Kaur v Jeswant Singh* [1987] 1 MLJ 214 and *Goh Keng How v Raja Zainal Abidin bin Raja Hussin & Anor* [1995] 3 MLJ 6 referred.

(3) Only three instalments amounting to some RM5,821.83 had been paid by the respondent. This did not necessarily entitle the respondent to a share in the said property when compared to the RM400,000 value of the the said property, as stated by the respondent. It would at most entitle the respondent to bring a claim for the return of this sum of RM5,821.83 or for damages to be assessed. Further the issue of the three instalments paid was not raised in the statutory declaration in support of the application for entry of the private caveat (see para 23); *Goo Hee Sing v Will Raja & Anor* [1993] 3 MLJ 610, *Eng Mee Yong v V Letchumanan* [1979] 2 MLJ 212, *Syed Ibrahim bin Syed Abdul Rahman v Liew Su Chin (F)* [1984] 1 MLJ 160, *Rajinder Kaur v Jeswant Singh* [1987] 1 MLJ 214 and *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719 referred.

(4) Although s 76 of the Law Reform Marriage and Divorce Act 1976 gave the court the discretion to decide and order a division of the community property of the couple, this was dependent and subject to the individual contribution by the parties. If the respondent succeeded in his claim, in the divorce action, on his right to a share to the said property based on his contributions, that fact alone would not directly give the respondent a caveatable interest to the said property. This was because the respondent could be awarded the value of the money based on his contribution. Any decision or order to be made in the divorce petition would be at the court's discretion (see para 32); *Re Heng Peng Hoo & Anor* [1989] 3 MLJ 103, *Lee Yu Lan v Lim Thain Chye* [1984] 1 MLJ 56 and *Leake v Bruzzi* [1974] 1 WLR 1528 referred.

(5) The court ought to weigh and consider only the grounds stated in an application for entry of a private caveat (Form 19B). The court ought not to consider extraneous material other than the grounds stated in the form for entry of a caveat. Much of the matters raised by the respondent in his affidavits served to cloud a fair consideration of the case and to prevent that court from considering only the relevant facts for the purpose of this application. Upon weighing all the relevant facts, conditions and situation of the case, especially the grounds upon which the respondent entered the caveat, the respondent was found to have shown insufficient grounds to maintain the caveat (see paras 34, 36); *Abdul Rahim bin Aki v Krubong Industrial Park (Melaka) Sdn Bhd & Ors* [1995] 3 MLJ 417 followed, *United Malayan Banking Corporation Bhd v Development and Commercial Bank (Ltd) Bhd* [1983] 1 MLJ 165, *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782 and *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719 referred.

(6) The cases referred to by counsel for the respondent on the right of the party to a share of the community property were Singapore cases filed under s 55 of the Singapore Women's Charter Cap 57 which had been decided after a full trial based on the facts in those cases. The decisions in those cases did not touch upon the question whether the respondent could file a private caveat on the said property and to maintain the caveat without having to show sufficient grounds that the respondent

had a caveatable interest thereto. These cases did not assist the respondent in maintaining the private caveat (see para 38); *Nagapushani v Nesaratnam & Anor* [1970] 2 MLJ 8, *Evelyn Tan v Tan Lim Tai* [1973] 2 MLJ 92 and *Lau Choong Choo v Chou We Chuan* [1980] 1 MLJ 6 distinguised .]

Nota-nota

Untuk kes-kes mengenai nafkah, lihat 7 *Mallal's Digest* (4th Ed, 2001 Reissue) perenggan-perenggan 2895–2900.

Untuk kes-kes mengenai kaveat, lihat 8 *Mallal's Digest* (4th Ed 2001 Reissue) perenggan-perenggan 3015–3312.

Kes-kes yang dirujuk

Abdul Rahim bin Aki v Krubong Industrial Park (Melaka) Sdn Bhd & Ors [1995] 3 MLJ 417 (dirujuk)
Attorney General of the Gambia v N'Jie [1961] All ER 504 (diikut)
Bank Negara Malaysia v Mohd Ismail & Ors [1992] 1 MLJ 400 (dirujuk)
Eng Mee Yong v V Letchumanan [1979] 2 MLJ 212 (dirujuk)
Evelyn Tan v Tan Lim Tai [1973] 2 MLJ 92 (dibeza)
Goh Keng How v Raja Zainal Abidin bin Raja Hussin & Anor [1995] 3 MLJ 6 (dirujuk)
Goh Paik Swan v Ng Choo Lum [1996] 3 MLJ 437 (dirujuk)
Goo Hee Sing v Will Raja & Anor [1993] 3 MLJ 610 (dirujuk)
Heng Peng Hoo, Re [1989] 3 MLJ 103 (dirujuk)
Lee Yu Lan v Lim Thain Chye [1984] 1 MLJ 56 (dirujuk)
Hew Sook Ying v Hiw Tin Hee [1992] 2 MLJ 189 (dirujuk)
Kumpulan Sua Betong Sdn Bhd v Dataran Segar Sdn Bhd [1992] 1 MLJ 263 (dirujuk)
Lau Choong Choo v Chou We Chuan [1980] 1 MLJ 6 (dibeza)
Leake v Bruzzi [1974] 1 WLR 1528 (dirujuk)
Lee Yu Lan v Lim Thain Chye [1984] 1 MLJ 56 (dirujuk)
Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719 (dirujuk)
Murugappa Chettiar Lakshmanan v Lee Teck Mook [1995] 1 MLJ 782 (dirujuk)
Nagapushani v Nesaratnam & Anor [1970] 2 MLJ 8 (dibeza)
Ng Ah Ba & Ors v Ramanda Sdn Bhd [1996] 1 MLJ 62 (dirujuk)
Rajinder Kaur v Jeswant Singh [1987] 1 MLJ 214 (dirujuk)
Soon Seng Co Sdn Bhd v Toko Palayakat Jamal (M) Sdn Bhd [1999] 5 MLJ 75 (dirujuk)
Syed Ibrahim bin Syed Abdul Rahman v Liew Su Chin (F) [1984] 1 MLJ 160 (dirujuk)
Sykt Telekom Malaysia lwn Business Chinese Directory Sdn Bhd [1996] 3 MLJ 692 (dirujuk)
Tay Bok Choon v Tahansan Sdn Bhd [1987] 1 MLJ 433 (dirujuk)
Teh Bee v K Maruthamuthu [1977] 2 MLJ 7 (dirujuk)
United Malayan Banking Corporation Bhd v Development and Commercial Bank (Ltd) Bhd [1983] 1 MLJ 165 (dirujuk)
Wong Kuan Tan v Gambut Development Sdn Bhd [1984] 2 MLJ 113 (dirujuk)
Wu Shu Chen (Sole Executrix of the Estate of Goh Keng How, decd) & Anor v Raja Zainal Abidin bin Raja Hussin [1997] 2 MLJ 478 (diikut)

Undang-undang yang dirujuk

Akta Membaharui Undang-Undang (Perkahwinan and Perceraian) 1976 s 76
Akta Surat Akuan 1960
Kanun Tanah Negara ss 327, 417, Borang 19B
Women's Charter Cap 57 [Sing] s 55

Sheanna Shanta (Vidhya Sheanna Low & Partners) bagi pihak pemohon.
KL Choy (KL Choy & Co) bagi pihak responden.

VT Singham H:

[1] Dalam kes ini, pemohon adalah seorang pemilik berdaftar tanah yang ditanda sebagai P N 10148, Lot No 109260, Mukim Ulu Kinta ('harta tersebut').

[2] Melalui saman pemula bertarikh 7 Julai 2003 lampiran 1, pemohon memohon suatu perintah seperti berikut:

(1) kaveat persendirian No 15541/2002 yang dimasukkan oleh responden ke atas harta tersebut dibatalkan menurut s 327 Kanun Tanah Negara;

(2) Pentadbir Tanah diperintahkan untuk melakukan segala apa benda seperti yang perlu untuk memberi kuatkuasa kepada apa-apa perintah yang diberi oleh mahkamah ini;

(3) responden membayar kepada pemohon ganti rugi yang akan ditaksirkan;

(4) kos bagi permohonan ini ditanggung oleh responden;

(5) lain-lain relief yang difikirkan patut oleh mahkamah yang mulia ini.

[3] Alasan-alasan bagi permohonan ini lampiran 1 secara ringkas adalah seperti berikut:

(a) pemohon merupakan pemilik berdaftar mutlak ke atas harta tersebut;

(b) pengkaveat (caveator) tidak mempunyai sebarang kepentingan ataupun hak daripada segi undang-undang atau pun secara benefisial terhadap harta tersebut;

(c) kewujudan kaveat persendirian No 15541/2002 tersebut hanya berfungsi untuk menyusahkan (aggrieve) pemohon sahaja;

(d) kepentingan pemohon telah diprejudis oleh kewujudan kaveat tersebut.

[4] Melalui afidavit yang diikrar pada 3 Julai 2003 lampiran 2 untuk menyokong permohonan lampiran 1, pemohon telah menyatakan secara ringkas seperti berikut:

(1) pemohon adalah pemilik berdaftar tanah harta tersebut di mana harta tersebut telah digadai kepada Malayan Banking Bhd pada tahun 1997;

(2) pada awal tahun 2003, pemohon telah membuat keputusan untuk pembiayaan semula (refinance) harta tersebut kepada Public Bank Bhd bagi RM200,000 demi menanggung pendidikan dua orang anak lelaki

beliau di mana seorang akan melanjutkan pelajaran tertiary di National University di Singapura dalam bidang kejuruteraan dan seorang lagi di Asia Pacific Institute of Information Technology (APIIT) di Kuala Lumpur dalam bidang komputer;

(3) pada 31 Mac 2003, pemohon telah menerima surat tawaran dari Public Bank Bhd untuk pembiayaan semula (refinancing) harta tersebut. Pada 24 Mei 2003, Malayan Banking Bhd telah menghantar surat penebusan (redemption) kepada peguamcara pemohon untuk membolehkan Public Bank Bhd menjelaskan jumlah penebusan (redemption) tersebut kepada Malayan Banking Bhd. Pada 29 Mei 2003, Public Bank Bhd telah menjelaskan RM108,811.09 sebagai jumlah penebusan (redemption) tersebut kepada Malayan Banking Bhd melalui Bankers Cek No 037447;

(4) pada 8 Mei 2003 suatu carian persendirian telah dilakukan ke atas harta tersebut oleh peguamcara pemohon dan mendapati tiada sebarang kaveat dimasukkan oleh responden;

(5) walau bagaimanapun, ketika peguamcara pemohon mengemukakan dokumen gadaian Public Bank Bhd untuk didaftarkan di Pejabat Tanah, Ipoh, peguamcara dimaklumkan bahawa responden telahpun memasukkan kaveat persendirian tersebut pada 9 November 2002. Seterusnya, perkara tersebut disahkan melalui hasil carian rasmi dari Pejabat Tanah dan Galian yang diterima oleh pejabat peguamcaranya pada 3 Julai 2003;

(6) pemohon kemudian telah memperolehi satu salinan diakui sah permohonan responden Borang 19B Kanun Tanah Negara untuk memasukkan kaveat tersebut bersama surat akuan responden yang menyokong permohonan kemasukkan kaveat tersebut;

(7) kaveat tersebut dimasukkan tanpa alasan munasabah oleh responden yang tidak mempunyai sebarang kepentingan berkaveat terhadap harta tersebut. Kewujudan kaveat tersebut hanya berfungsi untuk menyusahkan pemohon sahaja kerana walaupun pemohon telah berjaya mendapat pembiayaan semula (refinancing) daripada Public Bank Bhd terhadap harta tersebut, namun pinjaman tersebut tidak dapat dilepaskan kepada pemohon oleh Public Bank Bhd kerana kewujudan kaveat responden tersebut yang menghalang harta tersebut daripada digadaikan kepada Public Bank Bhd;

(8) responden dan pemohon mempunyai masalah perkahwinan dan pemohon telahpun memfailkan petisyen perceraian no 33–97–03 yang kini masih dalam proses tindakan mahkamah;

(9) oleh kerana responden langsung gagal/enggan memberi apa-apa nafkah hidup untuk ketiga-tiga anak, pemohon terpaksa mendapatkan wang melalui pembiayaan semula (refinancing) harta tersebut. Anak sulung beliau telah mendapat surat tawaran daripada National University, Singapura ('NUS') dan daripada Nanyang Technological University

Singapura ('NTU') dalam bidang kejuruteraan dan anak sulung telah memilih NUS untuk melanjutkan pelajarannya;

(10) anak kedua sedang melanjutkan pelajaran dalam kursus foundation di Asia Pacific Institute of Information Technology (APIIT) dan selepas itu akan menghabiskan kursus ijazah tersebut di Universiti Adelaide, Australia;

(11) anak bongsu pemohon sedang menuntut di tingkatan 3 di Sekolah Menengah Sam Tet, Ipoh dan beliau juga berkebolehan untuk melanjutkan pelajarannya ke universiti selepas menghabiskan Sijil Pelajaran Malaysia ('SPM') kelak;

(12) responden langsung tidak mempunyai sebarang kepentingan dalam harta tersebut dan telah memasukkan kaveat tersebut dengan salah. Tindakan responden yang memasukkan kaveat tersebut telah memprejudiskan pemohon memandangkan Public Bank Bhd telahpun menjelaskan jumlah penebusan (redemption) sebanyak RM108,811.09 setakat 25 Jun 2003 kepada Malayan Banking Bhd di mana pemohon perlu membayar semula RM108,811.09 kepada Public Bank Bhd oleh kerana gadaian Public Bank Bhd kini tidak dapat didaftarkan. Seterusnya Public Bank Bhd memulakan tindakan sivil terhadap pemohon untuk menuntut jumlah penebusan (redemption) tersebut;

(13) melalui perenggan 7b afidavit pemohon, lampiran 2, pemohon mengatakan bahawa harta tersebut dibeli oleh beliau pada 31 Disember 1997 melalui pengeluaran wang sebanyak RM8,115.49 dari Skim Perumahan Wang Simpanan Pekerja dan pemohon juga telah memohon pinjaman bank daripada Malayan Banking Bhd di bawah akaun Pinjaman Perumahan Akaun No 4-58220-90499-0 untuk RM327,930.14 di mana pemohon telah membuat bayaran ansuran bagi pinjaman perumahan tersebut sebanyak RM1,821.03 sebulan kepada Malayan Banking Bhd.

[5] Sebelum mahkamah ini merujuk kepada afidavit-afidavit jawapan dan balasan daripada kedua-dua pihak, adalah penting untuk merujuk kepada alasan-alasan responden yang dinyatakan dalam surat akuan untuk menyokong permohonan bagi masukkan kaveat persendirian melalui Borang 19B Kanun Tanah Negara. Untuk meneliti dengan jelas alasan-alasannya, mahkamah ini mencatatkan kandungan di Borang 19B seperti berikut:

Alasan-alasan untuk tuntutan responden di Borang 19B Kanun Tanah Negara bertarikh 8 November 2002 menyatakan:

Isteri saya adalah bernama Chen Sook Peng (No KP: 6321070) dan juga pemilik berdaftar bagi harta yang di pegang di bawah P N 10148 No Lot 109260 Mukim Hulu Kinta Negeri Perak.

Kami membeli harta ini bersama rumah kediaman pada tahun 1992 dan rumah ini adalah rumah keluarga dan saya sebagai suami mempunyai hak sama rata terhadap rumah ini.

Sekarang kami mempunyai masalah dan pertengkaran keluarga serta prosiding mahkamah sedang berjalan di Mahkamah Tinggi melalui Saman No 24–958–2002. Saya khuatir isteri saya akan menjual rumah ini tanpa pengetahuan saya. Oleh itu

untuk melindungi kepentingan saya terhadap harta berkenaan, saya memohon untuk memasukkan kaveat persendirian atas tanah tersebut'. [Penekanan ditambah.]

[6] Melalui surat akuan yang diikrarkan pada 8 November 2002, responden telah menyatakan seperti berikut:

(1) Saya telah berkahwin dengan Chen Sook Peng pada 27 April 1985;

(2) kami memiliki sebuah syarikat pengangkutan yang bernama Super Carrier Trading and Transport Sdn Bhd dan kami memegang syer sama rata di syarikat berkenaan. Dan daripada hasil usaha pendapatan syarikat ini, kami telah membeli sebuah rumah dengan ubah suai dengan harga RM400,000 dan di kenali sebagai No 24, Persiaran Kelabang Selatan 2, Taman Bertuah, 31200 Chemor, Perak yang di pegang dibawah P N 10148 No Lot 109260 Mukim Ulu Kinta Negeri Perak di mana adalah rumah keluarga kami;

(3) tetapi sekarang kami mempunyai masalah dan pertengkaran dan beliau menghalau saya daripada rumah tersebut. Kami juga mempunyai prosiding di Mahkamah Tinggi Ipoh melalui Saman No 24–958–2002 yang masih belum ditentukan. Maka saya takut beliau akan jual rumah keluarga tersebut kepada sesiapa tanpa pengetahuan saya di mana saya mempunyai hak sama rata di atas rumah tersebut;

(4) untuk melindungi kepentingan saya terhadap harta berkenaan dengan ini memohon untuk memasukkan satu kaveat persendirian atas tanah tersebut;

(5) Dan saya membuat surat akuan ini dengan kepercayaan bahawa apa-apa yang tersebut di dalamnya adalah benar, serta menurut Akta Surat Akuan 1960.

[7] Sesalinan kedua-dua Borang 19B Kanun Tanah Negara bertarikh 8November 2002 dan surat akuan responden yang diikrarkan pada 8November 2002 dilampirkan sebagai eksh di afidavit pemohon lampiran 2 yang menyokong saman pemula lampiran 1.

[8] Melalui afidavit jawapan lampiran 5 yang diikrarkan pada 21 Julai 2003, responden menyatakan di antara perkara-perkara yang lain seperti berikut:

(1) responden ingin membuat pembetulan tarikh membeli harta tersebut, di mana ianya adalah pada tahun 1997 dan bukan pada 1992 seperti dinyatakan di Borang Kaveat 19B dan surat akuan di mana ianya adalah kesilapan taip;

(2) perkahwinan responden dan pemohon telah didaftarkan pada 27 April 1985;

(3) responden mempunyai kepentingan (menurut undang-undang dan benefisial) di atas harta tersebut;

(4) responden telah membayar ansuran untuk harta tersebut dan merujuk kepada suatu salinan penyata akaun yang menunjuk sebahagian

pembayaran bagi ansuran untuk harta tersebut, seperti dinyatakan pada 11 November 2000 sebanyak RM1,821.83 sebagai ansuran telah dibayar untuk rumah di Taman Bertuah dan pada 11 Jun 2001 sebanyak RM2,000 telah dibayar dan pada 16 Julai 2001 sebanyak RM2,000 telah dibayar;

(5) pembayaran ansuran untuk pinjaman bagi membeli harta tersebut telah dikongsi oleh pemohon dan responden pada tahun-tahun mengikut pengetahuan responden;

(6) harta tersebut telah digunakan sebagai 'matrimonial home' dan perbelanjaan untuk 'renovation' dan untuk 'household items' telah dibayar atas usahasama kedua-dua pemohon dan responden;

(7) pemohon telah memfailkan prosiding untuk perceraian dan responden telah dinasihatkan oleh peguamnya dan beliau percaya bahawa beliau berhak sebahagian di atas 'matrimonial home' di bawah undang-undang perceraian. Sesalinan petisyen untuk perceraian yang difailkan oleh pemohon dilampirkan sebagai ekshibit dan jawapan responden kepada petisyen perceraian;

(8) harta tersebut telah dibeli dalam masa perkahwinan melalui usahasama walaupun didaftarkan di bawah nama pemohon dan responden percaya pemohon kerana pemohon adalah isteri beliau;

(9) harta tersebut adalah satu 'double-storey bungalow' berharga sekurang-kurangnya RM400,000 yang boleh dijual dan dengan wang tunai tersebut selepas membayar bank boleh beli satu lagi rumah dan boleh mempunyai wang tunai yang mencukupi untuk pembayaran 'full term' bagi pelajaran anak lelaki;

(10) pemohon menggunakan pelajaran sebagai suatu alasan untuk mengadakan hutang lagi dan menafikan responden sebahagian syer di atas harta tersebut. Pada masa harta tersebut dikaveatkan di bulan November 2002, pemohon telah dimaklumkan dan tidak ada sebab untuk menunggu sebelum mengambil tindakan sekarang. Sebelum kaveat dimasukkan, pemohon telah pun mengambil tindakan untuk perceraian responden;

(11) kaveat harus dikekalkan demi kekalkan 'status quo' sehingga prosiding perceraian ditamatkan. Pemohon melalui tindakan ini mencuba banyak cara melalui tindakan ini supaya dapat mengelakkan perhatian manakala prosiding perceraian belum ditamatkan;

(12) lain-lain tohmahan-tohmahan yang dibangkitkan oleh pemohon adalah tidak berasas dan dinafikan. Pemohon telah salah gunakan proses mahkamah dan memohon permohonan lampiran 1 ditolak dengan kos.

[9] Melalui afidavit balasan pemohon yang diikrarkan pada 23 Julai 2003 lampiran 6, pemohon telah menyatakan di antara perkara-perkara yang lain secara ringkas seperti berikut:

(1) mengapa responden telah menyatakan harta tersebut dibeli pada tahun 1992 dan bukannya pada 1997 dalam permohonan responden untuk memasukkan kaveat persendirian. Ini adalah kerana responden sememangnya tidak ingin mengetahui apa-apa mengenai pembelian dan pembiayaan pembayaran pinjaman harta tersebut. Responden telah memberitahu pemohon bahawa responden tidak ingin langsung bertanggungjawab terhadap harta tersebut. Maka pemohon berasa hairan bagaimana responden kini menuntut hak atas harta tersebut;

(2) pemohon menafikan tohmahan-tohmahan lain yang dibangkitkan oleh responden di afidavit jawapan lampiran 5 dan meletakkan responden kepada bukti yang kukuh mengenainya;

(3) secara alternatif, pemohon menyatakan sekiranya benar responden membuat tiga bayaran ansuran yang berjumlah RM5,821.83 kesemuanya semenjak harta tersebut dibeli pada 1997, ini tidak bermakna responden mempunyai hak dari segi undang-undang ke atas harta pemohon tersebut memandangkan pemohon yang telah memikul tanggungjawab untuk memperolehi dan membiayai pinjaman terhadap harta tersebut;

(4) seterusnya harta tersebut telah digunakan sebagai rumah kedua keluarga pemohon di mana sebenarnya rumah matrimonial pemohon dan responden yang mula-mula adalah No 142, Persiaran Rishah 3, Taman Rishah, Ipoh di mana rumah tersebut juga diperolehi oleh pemohon atas nama responden. Sesalinan Geran rumah No 142, Persiaran Rishah 3, Taman Rishah, Ipoh, surat perjanjian jual beli dan bukti pembayaran rumah tersebut bagi responden telah dilampirkan sebagai ekshibit;

(5) semua kerja-kerja ubahsuai untuk rumah tersebut dibayar oleh pemohon seorang. Malahan pemohon masih mempunyai beberapa resit-resit kerja ubahsuai tersebut yang berjumlah RM20,774.50;

(6) selain daripada mengakui bahawa pemohon telah memfailkan prosiding perceraian terhadap responden, pemohon menafikan bahawa responden berhak syer di atas harta tersebut;

(7) melalui petisyen perceraian tersebut, khususnya pada perenggan 12, pemohon tidak tuntut sebarang nafkah hidup diri pemohon tetapi mementingkan kepentingan ketiga-tiga anak lelaki tersebut tetapi responden dalam jawapan kepada petisyen perceraian telah tuntut segala-galanya daripada pemohon demi kepentingan dirinya sahaja tanpa mengendahkan kepentingan anak-anak mereka;

(8) pada 3 Disember 2002, responden telah mendapatkan satu perintah injunksi ex parte yang menghalang pemohon daripada mengendalikan akaun-akaun syarikat sehingga selesai bicara permohonan injunksi responden tersebut yang kini ditetapkan pada 27 Oktober 2003. Maka responden sendiri mempunyai pengetahuan bahawa pemohon tidak boleh mengguna pakai wang untuk pendidikan anak-anak tetapi dengan sengaja membuat tafsiran yang salah kepada mahkamah yang mulia ini. Malah responden sendiri sebagai salah seorang Pengarah

Syarikat Teik Ho Transport Sdn Bhd telah memfailkan tindakan guaman melalui Guaman Sivil No 22–268–2002 untuk menuntut kembali diantara lain RM240,000 daripada pemohon. Sesalinan perintah injunksi ex parte bertarikh 3 Disember 2002 telah dilampirkan sebagai ekshibit;

(9) pemohon merujuk kepada perenggan 16 di afidavit responden lampiran 5 di mana responden telah menyatakan bahawa pemohon telah mendapatkan satu perintah injunksi terhadap responden sehingga responden tidak dapat pergi ke pejabat di Syarikat Super Carrier Trading and Transport Sdn Bhd di mana responden adalah seorang pengarah dan kerja sebagai seorang pemandu m/lori. Sebagai jawapan, pemohon berkata bahawa beliau juga terpaksa mendapatkan satu perintah injunksi terhadap responden di antara lain melarang responden dan/atau wakilnya daripada mendekati dan/atau menghubungi pemohon secara peribadi, melalui surat, talipon atau apa-apa cara sekalipun serta melarang responden daripada mendekati dan/atau memasuki rumah kediaman pemohon khususnya No 24, Persiaran Klebang Selatan 2, Taman Bertuah, Chemor dan kawasan sekitarnya, dan/atau tempat kerja pemohon semasa pemohon berada di situ kerana mengkhuatiri keselamatan diri pemohon. Pemohon tidak pernah mendapatkan apa-apa perintah injunksi untuk menahan responden daripada pergi ke pejabat seperti yang dinyatakan oleh responden di perenggan 16 lampiran 5. Malah responden sendiri yang enggan datang kerja dan setelah itu responden telah memfailkan petisyen penggulungan terhadap syarikat pemohon;

(10) pemohon merujuk kepada perenggan 17 afidavit responden lampiran 5 di mana responden telah menyatakan bahawa responden telah diberhentikan sebagai Pengarah Syarikat Super Carrier Trading and Transport Sdn Bhd. Pemohon menyatakan bahawa pada 24 Februari 2003 syarikat tersebut telah melalui satu resolusi mengeluarkan responden sebagai Pengarah kerana responden pada 7 Februari 2003 telah memfailkan satu petisyen penggulungan terhadap syarikat tersebut untuk menuntut RM181,421.65 lihat petisyen penggulungan No 28–9–03. Manakala akaun syarikat tersebut yang telah diaudit untuk tahun 2002 menunjukkan syarikat tersebut hanya hutang RM2,547.28 setakat 31 Disember 2002. Responden sanggup memfailkan petisyen penggulungan yang remeh terhadap syarikat pemohon semata-mata untuk mengugut mata pencarian pemohon dan menyusahkan pemohon tanpa menghiraukan akibat tindakannya terhadap masa depan anak-anak. Akibat daripada tindakan responden juga, akaun syarikat tersebut telah ditahan oleh Maybank Bhd semenjak 7 Mac 2003;

(11) pemohon menafikan bahawa tohmahan responden di perenggan 18 afidavit jawapan responden lampiran 5 di mana responden telah menyatakan syarikat tersebut telah membayar segala keperluan 'keluarga' dan pelajaran anak-anak selama ini;

(12) pemohon telah menafikan perenggan 19 afidavit jawapan responden lampiran 5 dan menyatakan bahawa aset syarikat bukanlah aset peribadi

pemohon di mana kesemua pemegang saham syarikat tersebut termasuk responden yang (memegang 50% saham syarikat) mempunyai hak dalam aset tersebut mengikut bahagian masing-masing seperti terkandung dalam Borang 49 syarikat;

(13) pemohon menafikan tohmahan responden di perenggan 20 afidavit jawapan responden lampiran 5 di mana responden menyatakan bahawa pemohon menggunakan dua buah kereta dan responden tidak mempunyai sebarang kereta untuk digunakan dan responden hanya menggunakan sebuah motosikal sekarang. Pemohon menyatakan bahawa beliau hanya mempunyai sebuah kereta dan sebuah kereta yang lain adalah kepunyaan syarikat tersebut. Pemohon menyatakan bahawa responden bercakap bohong apabila menyatakan responden tidak mempunyai kereta kerana mengikut carian daripada Jabatan Pengangkutan Jalan Malaysia menunjukkan bahawa kereta No BAV 7766 sebuah kereta Mercedez Benz didaftarkan di atas nama responden sebagai pemilik kereta tersebut;

(14) pemohon menafikan bahawa beliau memfailkan permohonan untuk membatalkan kaveat adalah untuk tujuan menjual rumah kediaman pemohon sebaliknya itu dilakukan hanya untuk pembiayaan semula (refinance) harta tersebut untuk mendapatkan sedikit wang untuk membiayai pelajaran anak-anak;

(15) pemohon menafikan bahawa kedua-dua orang anak Wee Teik Hui dan Wee Teik Loong mempunyai cukup wang untuk memulakan pelajaran di Universiti;

(16) akibat tindakan kejam responden yang mengkaveatkan harta tersebut, Public Bank Bhd tidak dapat melepaskan baki pinjaman tersebut kepada pemohon dan antara itu, pemohon terpaksa memohon kepada Kumpulan Wang Simpanan Pekerja di bawah skim pendidikan kanak-kanak;

(17) pada 24 Jun 2003 kedua-dua anak lelaki Wee Teik Hui dan Wee Teik Loong telah berjumpa dengan responden untuk mendapatkan persetujuan daripada responden supaya membenarkan Public Bank Bhd mendaftarkan gadaiannya kerana mereka memerlukan wang untuk membiayai pendidikan mereka tetapi responden tidak setuju untuk berbuat demikian;

(18) pemohon tidak mempunyai apa-apa pengetahuan mengenai fakta bahawa responden telah memasukkan kaveat pada harta tersebut pada 9 November 2002 sehingga hasil carian rasmi yang diterima oleh peguamnya pada 3 Julai 2003 yang mengesahkan keadaan tersebut;

(19) pemohon menafikan tohmahan-tohmahan responden di perenggan-perenggan 24 dan 25 afidavit jawapan responden dan menyatakan bahawa semasa pemohon memohon persetujuan daripada responden untuk mendapatkan gadaian Public Bank Bhd, pemohon tidak berniat untuk mengeluarkan kaveat tersebut tetapi akibat kejahilan dan kedegilan responden sendiri, pemohon terpaksa membuat permohonan ini untuk membatalkan kaveat responden supaya gadaian pada Public Bank Berhad dapat didaftarkan dan Public Bank Berhad pula dapat melepaskan pinjaman tersebut kepada pemohon. Malahan pemohon

telah mula membayar baki faedah sebanyak RM234 untuk jumlah penebusan (redemption) yang telah dijelaskan oleh Public Bank Bhd kepada Maybank Bhd;

(20) pemohon telah dinasihatkan oleh peguamcaranya bahawa responden telah mengemukakan banyak isu yang tidak relevan dalam afidavitnya di mana pemohon terpaksa menjawabnya sungguhpun pemohon percaya dan menyatakan bahawa responden gagal dan/atau tidak ada sebarang kepentingan berkaveat terhadap harta tersebut.

[10] Melalui afidavit jawapan yang diikrarkan pada 28 Julai 2003 oleh responden lampiran 8 di antara perkara-perkara yang lain kebanyakkannya adalah tentang apa yang berlaku di syarikat Super Carrier Trading and Transport Sdn Bhd dan penggulungan syarikat tersebut dan tentang kenapa responden tidak menandatangani surat persetujuan untuk mendaftarkan gadaian kepada Public Bank Bhd. Responden melalui perenggan 5b berkata secara alternatif bahawa beliau telah dinasihati oleh peguamcara beliau dan sesungguhnya menyatakan bahawa pemohon memegang ½ bahagian di atas harta tersebut dalam amanah untuk beliau.

[11] Dalam kes ini, mahkamah ini berpuas hati bahawa pemohon adalah seorang yang terkilan, an aggrieved person seperti yang ditafsirkan dalam undang-undang dan mengikut s 327(1) Kanun Tanah Negara dan pemohon berhak untuk membuat permohonan ini untuk membatalkan kaveat yang difailkan oleh responden (rujuk kes *Wu Shu Chen (Sole Executrix of the Estate of Goh Keng How, decd) & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 478 dan *Attorney General of the Gambia v N'Jie* [1961] All ER 504 di ms 511).

[12] Mahkamah ini juga mendapati bahawa beban untuk memuaskan mahkamah bahawa adalah adil untuk kaveat dikekalkan adalah tugas responden bahawa beliau mempunyai kepentingan untuk memasukkan kaveat di atas harta tersebut.

[13] Dalam kes *Soon Seng Co Sdn Bhd v Toko Palayakat Jamal (M) Sdn Bhd* [1999] 5 MLJ 75, Kamalanathan Ratnam H di ms 82 berkata:

> … once an applicant has shown that he is an aggrieved party, it is the caveator's duty then to prove that he has a caveatable interest." (Rujuk kes *Nanyang Development (1966) Sdn Bhd v How Swee Poh* [1970] 1 MLJ 145 dan kes *Wong Kuan Tan v Gambut Development Sdn Bhd* [1984] 2 MLJ 113 di ms 115).

[14] Dalam kes *Teh Bee v K Maruthamuthu* [1977] 2 MLJ 7 di ms 12, Ali Ag CJ (Malaya) berkata:

> … The importance of the register document of title in terms of s 178(3) of the Code [National Land Code] read with s 89 is that it is conclusive evidence that title to the land in question is vested in the appellant.

[15] Melalui afidavit balasan pemohon yang diikrarkan pada 31 Julai 2003 lampiran 9, pemohon telah menjawab kepada afidavit jawapan responden lampiran 8 dan telah menjelaskan perkara-perkara pengurusan syarikat Super Carrier Trading and Transport Sdn Bhd serta perkara perbelanjaan

untuk pelajaran anak-anak seperti yang dibangkitkan oleh responden di afidavit jawapan beliau lampiran 8. Mahkamah ini berpendapat bahawa ianya tidak perlu untuk menyatakan dengan terperinci di alasan-alasan penghakiman ini melainkan mahkamah telah mengambil kira semua perkara-perkara yang dibangkitkan oleh kedua-dua pihak melalui afidavit-afidavit masing-masing.

[16] Mahkamah ini berpendapat bahawa alasan secara alternatif yang dibangkitkan di afidavit jawapan responden terakhir (lampiran 8) di perenggan 5b bahawa beliau telah dinasihati oleh peguamcara beliau dan sesungguhnya menyatakan bahawa pemohon memegang ½ bahagian di atas harta tersebut dalam amanah untuk responden dengan jelas menunjukkan responden di peringkat akhir-akhir cuba membangkitkan isu amanah di mana alasan seperti itu yang memang penting untuk memfailkan satu kaveat persendirian langsung tidak dinyatakan di surat akuan menyokong permohonan untuk memfailkan kaveat Borang 19B ataupun di afidavit jawapan pertama responden yang diikrarkan pada 21 Julai 2003 lampiran 5. Sebenarnya, di afidavit pertama responden beliau membangkitkan alasan-alasan yang lain dan langsung tidak sentuh bahawa harta tersebut dipegang oleh pemohon sebagai amanah untuk responden. Juga, dan sekiranya perkara ini adalah satu fakta yang benar dan ada sebarang persetujuan atau perbincangan di antara pemohon dan responden tentang isu amanah yang ada dalam pengetahuan responden sendiri, kenapa responden perlu dinasihati oleh peguamcara sama ada harta itu di pegang oleh responden sebagai amanah bagi ½ bahagian untuk responden. Seterusnya, sekiranya kenyataan amanah tersebut adalah benar-benar timbul dan ada dalam pengetahuan responden sendiri di atas harta tersebut kenapa perkara ini tidak dinyatakan sama sekali sama ada di surat akuan untuk menyokong Borang Kaveat 19B Kanun Tanah Negara ataupun di afidavit jawapan pertama bagi responden lampiran 5. Mahkamah ini berpendapat bahawa responden telah menunjuk bahawa beliau adalah dalam satu keadaan yang tidak tentu dan tidak mempunyai sebarang alasan yang kukuh yang sebenar-benarnya untuk memberi sebarang kepentingan kaveat di atas harta tersebut. Malangnya, responden ada membangkitkan pelbagai alasan dan fakta melalui afidavit-afidavit beliau yang tidak selaras dan bercanggah dengan alasan yang dinyatakan dalam surat akuan dan Borang 19B Kanun Tanah Negara.

[17] Dalam kes *Wong Kuan Tan v Gambut Development Sdn Bhd* [1984] 2MLJ 113 perkara yang ditimbulkan di antara perkara-perkara yang lain adalah apakah alasan yang disebut oleh perayu di atas permohonan Borang 19B apabila memasukkan kaveat. Hashim Yeop A Sani HP berkata di ms114–117:

> (1) I am a landed proprietor residing in Kuantan.
>
> (2) By a Deed of Assignment dated April 11, 1978 I sold the said land to Gambut Development Sdn Bhd. Pursuant to cl 4(a) of the said Deed of Assignment I am entering a private caveat as agreed to protect my interest in the said land *as the full purchase price remains unpaid.*
>
> (3) I am entering the caveat to protect my interest in the said land as agreed (Emphasis added).

The nature of the onus which lies upon a caveator in an application by the caveatee under s 327 of the National Land Code is settled in *Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212. If an applicant is the registered proprietor of the land he need only show that he is the registered proprietor. His registered title is prima facie evidence of his unfettered right to deal with the land as he pleases. It is then for the caveator to satisfy the court that there are sufficient grounds in fact and in law for the caveat to be extended. The caveator must satify the court that on the evidence presented his claim to an interest in the land raises a serious question to be tried and having done so he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the main action.*

This approach to an application under s 327(1) of the National Land Code makes an analogy between the effect of the caveat and that of an interlocutory injunction in an action for specific performance of contractual sale of land. The court's power to grant an interlocutory injunction in such an action is discretionary. Similarly under s 327 of the National Land Code the court's power is discretionary.

To put it more simply, the caveator in this case must first satisfy the court that he has a 'caveatable interest' in the land. Only if he has such an interest can he qualify to lodge a caveat under s 323 of the National Land Code. In the application to have the caveat removed the onus is cast upon the caveator to satisfy the court that on the evidence presented his claim to an interest in the land raises a serious question to be tried and after having done so he must go on to show that on the balance of convenience the caveat should be extended until the disposal of the main action.

As can be seen in his own statement when lodging the caveat the sole basis of his claim of right to lodge the caveat was cl 4(a) of the Deed of Assignment. Clause 4(a) reads as follows:

> 'The Parties hereto are aware that the Second Party will charge the whole of the said land to Messrs. Hong Leong Finance Bhd. of Bangunan Hong Leong, 117 Jalan Bandar Kuala Lumpur for the sum of S1,000,000/- (Dollars One Million only) upon its transfer to the Second Party by the Vendor and the Parties hereto have agreed that the Vendor hereby waives the MPI Guarantee declared in clause 8 of the said Agreement and shall in lieu thereof:
>
> (a) Lodge a Private Caveat against the said land being CT 4876 Lot 3 Sec 20 Town of Kuantan to protect his interest.'

The expression 'interest' in the National Land Code was examined by the Privy Council in *Registrar of Titles, Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44. An unsecured civil debt is a mere personal claim and did not come within the meaning of "interest" in s 320(1) of the National Land Code. Section 320 deals with circumstances in which the Registrar's caveat may be entered. The interest referred to in s 323(1) of the Code is interest as envisaged in the Code. Lord Diplock in *Temenggong Securities Ltd* said at p 47:

> 'The expression "interest" is used in many sections throughout the Code apart from s 320 and in none of them to which their Lordships' attention has been drawn can it be plausibly suggested that it bears any wider meaning than an interest in land of a kind which is recognized by the Code as being either registrable or otherwise entitled to protection.'

Thus it is plain that the appellant claimed to have the right to lodge the caveat but based on cl 4(a) of the Deed of Assignment. It is also plain that this was a contractual right applicable only when purchase price is not fully paid. But this alone cannot

create a caveatable interest in the land. The contractual provision does not create an interest within the meaning of section 323 of the National Land Code. Interests which are protectable by caveat are only interests recognised by the Code. The contractual provision does not amount to an equitable or other interest sufficient to support a caveat. Section 323(1) of the National Land Code sets out the classes of persons who may lodge private caveat. They are person or body claiming title to any alienated land; or claiming any registrable interest in any alienated land; or claiming any right to such title or interest; and includes person or body claiming to be beneficially entitled under any trust affecting any such land or interest. The words "any right to such title or interest" may be wide enough to allow rights arising under a contract for registrable dealing to be protected by a caveat but they are not wide enough to cover mere personal rights as distinguished from rights relating to land. See also *David Wong: Land Tenure in the Malay States* — pp 416–435.

Now we come to the question of the alleged trust. It would appear that apart from the alleged unpaid balance of the purchase price the appellant also relied on an alleged trust created over the 'odd lots' referred to in the affidavits and testimonials of the appellant and his lawyer, Mr Mahindar Singh. References to these 'odd' and 'unsold' lots do not however appear anywhere in the main agreement nor in the Deed of Assignment. *The appellant attempted to establish this by extraneous evidence. But as the learned Judge pointed out the onus of proving the existence of the trust was on the appellant and he said that even if the evidence to establish the alleged additional terms and conditions were admissible he was far from being satisfied that the appellant had discharged the onus*. The learned Judge in his judgment dealt at length (with which we agree) with this claim as follows:

> '*It was only in his second affidavit that Datuk Wong brought up the question of the odd lots and referred to the letter written by Hong Leong Finance Sdn Bhd* — (Exh WKT 10) which does nothing for Datuk Wong's contention. More to the point would have been the letter of October 31, 1978 written by M/s Mahindar & Co to Gambut stating that only 36 lots were sold and not the whole land. Tan Soo Hai in Court has denied any such understanding.
>
> *The contention that the odd lots were not sold and that Gambut holds them in trust for Datuk Wong is inconsistent* with the terms of the sale and purchase agreement, *with what is stated in the application for entry of caveat and in the supporting statutory declaration*. It is also inconsistent with what is stated on the face of the document of title.'

Thus the learned judge found that on the balance of probability the whole of the land was sold absolutely and there were no odd lots unsold. Looking at the sale agreement we found no reason to disagree with the finding of the learned judge on this point. We also feel that it is not easy to believe that an experienced lawyer like Mr Mahindar Singh would have unwittingly or otherwise omitted very important provisions from the written agreement.

It is our view therefore that the appellant had no interest in the land capable of protection by caveat by virtue of cl 4(a) of the Deed of Assignment. *Neither has the appellant satisfied the court on the allegation of trust. Therefore the appellant had no right to lodge the caveat in the first place and much less any right to have the caveat extended* (Penekanan ditambah).

[18] Dalam kes *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189 di ms 195, Mohamed Azmi SCJ berkata:

… there appears to be material contradiction between the caveator's affidavit and his previous statements made in Form 19B of the NLC, not only on his capacity in entering the caveat but also the ground for which it is entered. The absence of the board's resolution before the court makes the task of resolving the contradiction even more difficult particularly when the caveat is not expressly entered in the name of the company. The contemporaneous document in Form 19B does not support the respondent's assertion in his affidavit that the caveat is lodged by him as a managing director to protect the interest of the company, but is expressly for the purpose of protecting his own personal interest, possibly as a shareholder. The address given in the document, viz 'No 147 Kampong Jaya Semenyeh' is not the address of the company and nor did he sign the document in his capacity as managing director. To add to the confusion is the argument in oral submission referred to earlier that as a managing director, he entered the caveat as a trustee for the company and thereby bringing his case under s 323(1)(b) as a person claiming to be beneficially entitled under a trust affecting the disputed land.

From Form 19B (see exh 'HSY—11' at p 38 of appeal record), it is clear that the caveat is entered by the respondent under s 323 for the express purpose of protecting his personal interest. This is obvious from the attestation clause in the application for entry of the caveat which constitutes the ground of the application. It states:

'Saya adalah salah seorang pengarah di syarikat perumahan Hew Hee BrosHoldings Sdn Bhd, pemilik berdaftar ke atas Tanah-Tanah GM 396.397.400.401.402.441 dan 451 Mukim Semenyih.'

[19] Dalam kes *Goh Paik Swan lwn Ng Choo Lum* [1996] 3 MLJ 437 dims445, Gopal Sri Ram HMR berkata:

Meaning no disrespect to the learned judge, it would appear that he did not sufficiently address his mind to the facts that were presented to him. *The respondent had, in his application in Form 19B for the entry of the caveat, described the document of 4 May 1995 as an option and not as an agreement. Having entered the caveat on that footing he was, if he desired this restraint to remain upon the register, obliged to sustain its existence upon the grounds stated by him in his aforesaid application. Itwould be wholly wrong to ignore, as the learned judge did, a solemn claim made in aform prescribed by Parliament for purposes of imposing a serious restraint upon theexercise by a registered proprietor of his rights over his immovable property* (Penekanan ditambeah).

[20] Dalam kes *Rajinder Kaur lwn Jeswant Singh* [1987] 1 MLJ 214 di ms 216, Syed Agil Barakbah HMA untuk Mahkamah Agung berkata:

In the present appeal, *nothing has been shown of the existence of any trust, express or implied, as alleged in the affidavit in favour of the company*. Clearly, the respondent's assertion at paragraph 4 of his statutory declaration that 'the alleged property were registered in the names of the registered proprietors who are also shareholders and directors of the company as trustees of the company's beneficial interest in and title to the property' cannot be true since it is materially contradicted by his own admission that the property is registered in the name of the appellant. There was no resolution by the company at any meeting of its board of directors to purchase the said land. The entry in the title deed shows a direct transfer from the former registered owner to the appellant personally and below that is another entry on the same date showing a charge of the property by the respondent to the D & C Bank Bhd (see page 48 of the Appeal Record, Volume 3). No trust caveat has been lodged under section 332 of the National Land Code to indicate that the property is being held by the company in trust. (Penekanan ditambah.)

[21] Dalam kes *Goh Keng How v Raja Zainal Abidin bin Raja Hussin & Anor* [1995] 3 MLJ 6 di ms 17, Abdul Malik Ishak H berkata:

> … It is my judgment that *Goh's failure to disclose the existence of the trust deed in his statutory declaration estops him from relying on the argument of the existence of that trust deed where none is mentioned in the statutory declaration and, consequently*, Goh *must now only rely on what has been set out in his statutory declaration to justify the continued existence of the private caveat on the said land. Thus, what was deposed to* by Goh *in his affidavit* affirmed on 13 June 1994 (encl 3) *in regard to the existence of the trust deed cannot be considered by this court as this court is only obliged to look at the statutory declaration* of Goh *when he first lodged the private caveat* on 14 January 1989 *and* Goh too *cannot rely on that affidavit of his (encl 3) to ground his claim that the said land was held* by Long *in trust* for Mingshu Syndicate. In *Sim Kwang Mui Ivy v Goh Peng Khim* [1995] 1 SLR 186, the Singapore High Court held that *a caveator was not permitted to justify his caveat on grounds other than those given in the caveat*. No explanation was offered as to why the defendant failed to disclose in his caveat that there was an oral agreement by the plaintiff to sell the property to him. As such, *the defendant could not seek to justify the caveat on a ground which was not stated in the caveat*. There the Singapore High Court had to construe the provisions of s 104 of the Land Titles Act (Cap 157) which reads as follows (the relevant portions only):
>
> (1) Any person claiming an interest in land, or any person otherwise authorized by any Act to do so, may lodge with the Registrar a caveat in the prescribed form;
>
> …
>
> (4) Every caveat shall be signed by the caveator or by his solicitor, and shall contain —
>
> (a) an accurate description of the interest claimed; and
>
> (b) such description as may be sufficient to identify the land intended to be affected.
>
> On appeal, the decision of the High Court was affirmed by the Singapore Court of Appeal.
>
> Likewise, here there was no explanation at all as to why Goh failed to disclose the existence of the trust deed in his statutory declaration. All parties seem to have overlooked this vital point. The absence of any explanation on the part of Goh must be held adversely against him. (Penekanan ditambah.)

[22] Dalam kes *Wu Shu Chen (Sole Executrix of the Estate of Goh Keng How, decd) & Anor v Raja Zainal Abidin bin Raja Hussin* di ms 499, Mahkamah Rayuan telah mengesahkan keputusan Mahkamah Tinggi di kes *Goh Keng How*. Dalam kes *Wu Shu Chen* Mokhtar Sidin JCA berkata:

> The Code contains no definition on who is an aggrieved person. To my mind, the word 'aggrieved' must be given its ordinary meaning. To be aggrieved means one is dissatisfied with or adversely affected by a wrongful act of someone. An aggrieved person is therefore a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body ...
>
> I now come to the second primary issue which is crucial to the appellants' case, ie whether the two caveats should be removed. This necessarily calls for an enquiry into whether Goh, as the managing partner of Minghsu Syndicate, under s 323 of the Code had stated the nature of his claim forming the basis of his application in

Form 19B under s 323(2), which had to be verified by his statutory declaration under s 323(3). This important s 323 merits full reproduction below:

'323 Applications for entry of private caveats

(1)The persons and bodies at whose instance a private caveat may be entered are —

(a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest;

(b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and

(c) the guardian or next friend of any minor claiming to be entitled as mentioned in para (b).

(2) Any such person or body wishing to apply for the entry of such a caveat shall do so in Form 19B and such application shall be attested in accordance with the provisions of s 211 and shall state therein the nature of the claim on which his application is based, and whether the caveat is to be expressed to bind the land itself or a particular interest only.

(3) Any application under this section shall be accompanied by the prescribed fee and, so far as it sets out the claim giving rise thereto, be verified by a statutory declaration by the applicant or his advocate and solicitor.'

Paragraph 2 of Form 19B reads simply thus:

'(2) The grounds of my claim to the land/interest are ...'

The basis of Goh's claim to the land is best described in his own words in para 2 of his Form 19B, which were quoted in para 7 of the respondent's affidavit dated 16 July 1994 challenging the caveatable interest of Goh. The said para 7 is reproduced below, with Goh's own words emphasized by me:

As can be seen in the said para 2 above, Goh had not disclosed what that so-called 'certain document' was. He chose to hide it from the world at large and it was as good as having nothing at all to show the caveatable interest he or Mingshu Syndicate claimed. *He failed to disclose the instrument of trust in his caveat*.

Under s 89 of the Code, the register document of title is conclusive evidence of title: see *Teh Bee v Maruthamuthu* [1977] 2 MLJ 7. Anyone making a title search in the registry would find Long as the registered proprietor, free of encumbrances and free of any trust, except the defective caveats of Goh and Ho. They failed to state in their applications that the land was subject to a trust and they are now estopped from relying on the trust against the respondent who would be prejudiced or misled by the misconduct of Goh and Ho. In this regard, the learned judge at appeal record pp 39—40, referred to *Sim Kwang Mui Ivy v Goh Peng Khim* [1995] 1 SLR 186, in which Kan Ting Chiu J in the High Court of Singapore decided that a caveator would not be permitted to justify his caveat on grounds other than those stated in the caveat. On appeal, the decision was affirmed by the Singapore Court of Appeal. Had Goh or Ho entered or caused the entry of a trust caveat under ss 332 and 333 of the Code, the trust caveat would serve to give notice to the world at large that the land was subject to a trust. By itself, a private caveat is not a remedy, and it does not create an interest in land. The caveat temporarily freezes the register document of title until timeous legal action is instituted for the determination of the dispute. Counting from 1959, when Long became the registered proprietor of the old Grant No 339 (appeal record p 518), Mingshu Syndicate had armed Long with the preceding title to the land and represented to the world

at large that Long was the beneficial owner thereof free of any trust for an unprecedented and incredibly long period of over 33 years up to 1993 when the respondent purchased the land under the sale and purchase agreement. Counting from 23 October 1967 when the new Grant 21957 (appeal record p 539) was registered in the name of Long free of any trust, the period would still be a very long one of some 25 years up to 1993 when the respondent executed the agreement. The learned judge had at pp 61 and 62 of his judgment summarized under six items the acts or omissions of Goh or Ho or Mingshu Syndicate which 'had the effect of inducing Raja Zainal Abidin to act to his prejudice' ([1995] 3 MLJ 6 at p24). I respectfully agree with his findings.

In my judgment, all interested parties in respect of the claim to the land were before the learned judge, ie the appellants claiming the land for Mingshu Syndicate as its partners, and the respondent as the purchaser having paid the full purchase price for the land and aggrieved by the existence of the private caveats of Goh and Ho. No trial is necessary to determine if the respondent is an aggrieved person. The appellants, admittedly, could not even get past the first hurdle in Luggage Distributors' case. In other words, the appellants and Mingshu Syndicate had no caveatable interest in the land. Thus, on this issue alone, the caveats must be removed and this too does not require a trial. On the above two primary issues found in favour of the respondent, the situation is even clearer now that they do not form triable issues since the appellants have not sought leave to appeal to the Federal Court. There is also no need to have a trial on the dissolution of Mingshu Syndicate on the deaths of its partners as the facts are not in dispute and the law is clear. The accrual of the cause of action on 4 November 1968 and the question of limitation and laches are based on the undisputed affidavit evidence of Goh himself. The said Civil Suit No 22–328–1994 was, as stated before, filed some 14 long years out of time. No trial is required to determine this obvious fact. I therefore hold that on the above primary and material issues, there is no serious issue to be tried in the civil suit, and the question of balance of convenience or balance of justice does not arise. (Penekanan ditambah.)

[23] Mahkamah ini juga berpendapat bahawa hanya di atas ketiga-tiga pembayaran ansuran berjumlah RM5,821.83 sahaja yang dibuat oleh responden tidak semestinya memberi setengah bahagian kepentingan atau hak di atas harta tersebut kepada responden apabila berbanding dengan harga harta tersebut seperti yang dikatakan oleh responden sendiri bahawa harga harta tersebut adalah dalam lingkungan RM400,000 melainkan mungkin ia akan membawa satu tuntutan untuk mengembalikan wang sebanyak RM5,821.83 tersebut kepada responden oleh pemohon atau sebarang kerugian yang akan ditaksirkan. (Rujuk kes *Re Heng Peng Hoo & Anor* [1989] 3 MLJ 103). Juga, perkara tentang tiga pembayaran tersebut seperti dinyatakan di perenggan 6 afidavit jawapan responden lampiran 5 langsung tidak dinyatakan di surat akuan untuk menyokong permohonan Borang 19B untuk memasukkan kaveat persendirian.

[24] Dalam kes *Goo Hee Sing v Will Raja & Anor* [1993] 3 MLJ 610 di ms613, Mahadev Shankar H (pada masa itu) berkata:

In order to file a caveat, the caveator must have a caveatable interest.

… the claim must be to title or a right thereto in praesenti, and not to some contingent title or right thereto in futuro. (Penekanan ditambah.)

[25] Mahkamah ini mendapati bahawa perkara-perkara yang dibangkitkan oleh responden melalui afidavitnya dan dijawab oleh pemohon melalui afidavitnya dan setelah meneliti Borang 19B Kanun Tanah Negara dan surat akuan responden ia memberi gambaran yang jelas untuk mahkamah ini menentukan di peringkat ini sama ada responden mempunyai kepentingan yang boleh dikaveat di atas tanah tersebut dan tidak perlu untuk mahkamah ini menangguhkan perkara ini sebagai perkara yang membangkitkan isu-isu yang serius dan ditentukan dalam satu perbicaraan penuh. Sebenarnya, mahkamah ini boleh menentukan di peringkat ini di atas fakta-fakta dan keadaan kes ini dan mahkamah ini mendapati bahawa perkara-perkara yang dibangkitkan tidak semestinya ditentukan dalam perbicaraan penuh dan mahkamah ini boleh menentukan di peringkat ini sama ada responden mempunyai kepentingan yang boleh dikaveatkan di atas harta tersebut.

[26] Dalam kes *Eng Mee Yong v V Letchumanan* [1979] 2 MLJ 212 di ms217, Lord Diplock berkata:

> ... Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be. In making such order on the application as he "may think just" the judge is vested with a discretion which he must exercise judicially. It is for him to determine in the first instance whether statements contained in affidavits that are relied upon as raising a conflict of evidence upon arelevant fact have sufficient prima facie plausibility to merit further investigation as to their truth. Since this is a matter upon which the opinions of individual judges may reasonably differ, an appellate court ought not to interfere with the judge's exercise of his discretion under section 327 of the National Land Code unless the way in which he exercised it is shown to have been manifestly wrong … .

[27] (Rujuk kes-kes *Kumpulan Sua Betong Sdn Bhd v Dataran Segar Sdn Bhd* [1992] 1 MLJ 263 di ms 290, *United Malayan Banking Corporation Bhd v Development And Commercial Bank (Ltd) Bhd* [1983] 1 MLJ 165, *Wu Shu Chen (Sole Executrix of the Estate of Goh Keng How, decd) & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487). (Juga rujuk kes *Ng Ah Ba & Ors v Ramanda Sdn Bhd* [1996] 1 MLJ 62 di ms 70F–G dan *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400).

[28] Dalam kes *Syed Ibrahim bin Syed Abdul Rahman v Liew Su Chin (F)* [1984] 1 MLJ 160, di ms 163, Lee Hun Hoe HB (Borneo) berkata:

> … not all disputes of fact necessarily raise serious questions to be tried. It is of course quite right to say that it is undesirable to resolve disputes on affidavit evidence. Yet judges are expected in applying the test to be critical of the affidavit evidence which must on the face be at least plausible.

[29] (Rujuk kes (1) *Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1 MLJ 433 di ms 436 dan (2) *Sykt Telekom Malaysia lwn Business Chinese Directory Sdn Bhd* [1996] 3 MLJ 692 di ms 694).

[30] Dalam kes *Rajinder Kaur v Jeswant Singh* [1987] 1 MLJ 214 di ms 216, Syed Agil Barakbah HMA untuk Mahkamah Agung berkata:

> ... we do not consider the affidavits in the present appeal have raised any serious question to be tried and the balance of convenience does not favour the status quo to be maintained until the trial of the action.

[31] Dalam kes *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719 di ms 740, Gopal Sri Ram HMR berkata:

> THE APPROACH
>
> The function of a court hearing an application under s 327(1) for the removal of a private caveat has been alluded to in at least three cases. However, before I advert to the pronouncements made in those cases, it may be useful to recall to mind the words of the Code which, in this context, provides as follows:
>
> 'Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, ex parte) may make such order on the application as it may think just.'
>
> In *Eng Mee Yong*, Lord Diplock, in two passages, summarized the approach to be taken by a court faced with such an application as is postulated by the section. This is what he said (at p 215B—C):
>
> 'This is the nature of the onus that lies upon the caveator in an application by the caveatee under s 327 for removal of a caveat: he must first satisfy the court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried: and, having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party.'
>
> Earlier, at p 214F—G, he rued the undesirable consequences that may follow in the absence of a timeous disposal of the application, in words that merit recollection:
>
> 'Unless there were some speedy procedure open to the registered proprietor to get the caveat set aside in cases where the caveator's claim is baseless or frivolous or vexatious, the Torrens system of land registration and conveyancing, so far from giving certainty to title to land in Malaya [it should read as Malaysia] would leave the registered proprietor in a more precarious position as respects his powers of disposition of his land than an unregistered proprietor under English law.'
>
> The Supreme Court in *Kumpulan Sua Betong Sdn Bhd v Dataran Segar Sdn Bhd* [1992] 1 MLJ 263 made it clear that any claim to a caveatable interest that is asserted, 'must be minutely inquired into in order to decide whether the caveat should remain on the register document of title or be removed' (per Jemuri Serjan CJ (Borneo) at p 270).
>
> In my judgment, there are three stages through which an inquiry of this nature must go. *The first stage* is the examination of the grounds expressed in the application for the caveat. If it appears that the grounds stated therein are *insufficient in law* to support a caveat, then *cadit quaestio*, and the caveat must be removed without the necessity of going any further.

Wong Kuan Tan v Gambut Development Sdn Bhd [1984] 2 MLJ 113, illustrates how the issue of caveatability may be concluded at the first stage. There, the vendor of land sold and transferred it to a purchaser. Part of the purchase price was to be settled by the re-transfer of certain odd lots that were included in the sale. The striking feature of the case is that the relevant deed of assignment under which the re-transfer was to take place expressly made provision for the vendor to enter a private caveat. Such a caveat having been entered on the ground, inter alia, that the full purchase price had not been paid, the purchaser applied under s327(1) for its removal. The High Court ordered the removal and an appeal by the vendor to the Federal Court failed.

Hashim Yeop A Sani FJ (later CJ (Malaya)) stated the proposition (at page 115) in language unrivalled for its clarity:

> 'To put it more simply, *the caveator in this case must first satisfy the court that he has a 'caveatable interest' in the land*. Only if he has such an interest can he qualify to lodge a caveat under s 323 of the National Land Code. In the application to have the caveat removed the onus is cast upon the caveator to satisfy the court that on the evidence presented his claim to an interest in the land raises a serious question to be tried and after having done so he must go on to show that on the balance of convenience the caveat should be extended until the disposal of the main action.' (Emphasis added.)

At p 116 of the report he added:

> 'Thus it is plain that the appellant claimed to have the right to lodge the caveat but based on cl 4(a) of the deed of assignment. It is also plain that this was acontractual right applicable only when purchase price is not fully paid. But this alone cannot create a caveatable interest in the land. The contractual provision does not create an interest within the meaning of s 323 of the National Land Code. *Interests which are protectable by caveat are only interests recognized by the Code*. The contractual provision does not amount to an equitable or other interest sufficient to support a caveat. Section 323(1) of the National Land Code sets out the classes of persons who may lodge private caveat. They are person or body claiming title to any alienated land; or claiming any registrable interest in any alienated land; or claiming any right to such title or interest; and includes person or body claiming to be beneficially entitled under any trust affecting any such land or interest. The words 'any right to such title or interest' may be wide enough to allow rights arising under a contract for registrable dealing to be protected by a caveat but they are not wide enough to cover mere personal rights as distinguished from rights relating to land. See also David Wong, *Land Tenure in the Malay States* at pp 416—435.' (Emphasis added.)

Another illustration is afforded by the facts of *Tan Heng Poh v Tan Boon Thong & Ors* [1992] 2 MLJ 1 which concerned the interest of a beneficiary under a will. Although the correctness of this decision in another respect, not relevant for present purposes, has been called into question and effectively reversed (see *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345), it remains as authority for the proposition that a beneficiary under a will has no caveatable interest until his testator's estate has been fully administered.

The matter does not come to an end once the caveator satisfies the court that his claim as expressed in the application in Form 19B amounts in law to a caveatable interest. He must go on to show, in appropriate cases, that, based on the affidavits filed, his claim discloses a serious question meriting a trial. This then is the second stage. The degree of proof that has to be offered will, of course, vary from case to case.

At this *the second stage* the court is more concerned with matters of evidence and proof offered to support the caveator's claim. *Million Group Credit Sdn Bhd v Lee Shoo Khoon & Ors* [1986] 1 MLJ 315 affords a good illustration. The caveator in that case alleged that the registered proprietor of certain property had sold it to him under a written agreement. There had been an offer and a counter offer followed by discussions on a draft written agreement in which one of the clauses had, at the instance of the vendor, been deleted. As a result of those discussions, an engrossed agreement executed by the caveator was sent to the vendor's solicitors together with a cheque for 10% of the purchase price. The letter under cover of which these were sent stated that the deposit was not to be returned until after the vendor had executed the agreement. Three months later, the vendor's solicitors wrote saying that the vendor could not agree with some of the terms in the written agreement. A caveat was entered by the purchaser. The vendor applied, under s326 of the Code, to the land administrator who issued a notice to the caveator to show cause why the caveat ought not to be removed. The caveator applied to the court to have the caveat extended. Mahadev Shankar J (as he then was) dismissed the application after undertaking a careful examination of the evidence adduced to support the existence of a serious question to be tried. He held that on the evidence presented to him there was no concluded contract.

Although that case was decided under s 326, the approach there adopted applies to an application made under s 327(1) and we entertain no doubt whatsoever that Mahadev Shankar J was right in the approach he took. The case illustrates the proposition that, although a caveator may, in his application for the entry of a caveat, show a prima facie caveatable interest in the property in question, he may fail to adduce satisfactory evidence at the hearing of the application for its removal so that the judge would be entitled to hold that the claim in support of the caveat has not been made out and that there is therefore no serious question to be tried.

The third stage is arrived at only after the first two hurdles have been crossed by the caveator. Here the question to be asked relates to the balance of justice, or what Lord Diplock termed in *Eng Mee Yong* as 'the balance of convenience'. As to the matters that go to determine in which direction the balance should tilt, these have already been set out in such clear terms by Lord Diplock in *Eng Mee Yong* that mere repetition becomes unnecessary.

It is only upon satisfying these three stages of curial scrutiny that a caveat may be permitted to remain. That this should be so is only logical; for it is a serious matter to caveat a person's property, and unless a case is properly made out, a caveat ought not to be permitted to remain on the register a moment longer than is absolutely necessary. (Penekanan ditambah.)

[32] Seksyen 76 Akta Membaharui Undang-Undang (Perkahwinan and Perceraian) 1976 memang memberi budi bicara kepada mahkamah untuk menentukan atau memerintahkan pembahagian harta-harta yang diperolehi dalam masa perkahwinan iaitu diperolehi di atas usahasama oleh suami isteri dan ini adalah bergantung dan tertakluk kepada berapakah sumbangan yang diberi oleh kedua-dua pihak atau masing-masing. Oleh itu, sekiranya responden dapat berjaya dalam tindakan perceraian tentang tuntutan beliau untuk hak sebahagian harta tersebut di atas sumbangan yang diberi oleh beliau, mahkamah ini berpendapat bahawa perkara itu bukan terus memberi hak kepentingan untuk memasukkan kaveat di atas harta tersebut kerana responden boleh diberi pampasan dengan wang selepas menentukan berapakah jumlah wang yang disumbangkan oleh beliau dan sebarang keputusan atau

perintah yang akan di buat dalam petisyen perceraian adalah di atas budi bicara mahkamah (rujuk kes *Re Heng Peng Hoo* [1989] 3 MLJ 103, *Lee Yu Lan v Lim Thain Chye* [1984] 1 MLJ 56, *Leake v Bruzzi* [1974] 1 WLR 1528).

[33] Mahkamah ini juga telah meneliti dan menimbang isu-isu yang dibangkitkan oleh responden tentang Syarikat Super Carrier Trading and Transport Sdn Bhd dan mendapati bahawa perkara-perkara tentang cara perniagaan syarikat itu dijalankan boleh dan harus ditentukan dalam petisyen penggulungan syarikat itu yang difailkan oleh responden (rujuk kes *Wong Kuan Tan* yang ada kaitan dengan fakta-fakta yang dibangkitkan oleh responden tentang pergerakkan wang di syarikat tersebut).

[34] Kes-kes yang dibincangkan dalam alasan-alasan penghakiman ini dengan jelas menunjukkan bahawa mahkamah ini seharusnya meneliti dan menimbang alasan atau alasan-alasan yang dinyatakan dalam permohonan untuk masukkan kaveat (Borang 19B). Mahkamah ini tidak sepatutnya menimbang sebarang perkara-perkara luaran (extraneous material) yang dikemukakan selain daripada alasan-alasan yang dinyatakan dalam borang untuk memasukkan kaveat. Mahkamah mendapati bahawa kebanyakkan perkara-perkara yang dibangkitkan oleh responden melalui afidavit-afidavit beliau mahupun cuba dibangkitkan dengan tujuan untuk menunjukkan bahawa beliau mempunyai kepentingan yang boleh dikaveat adalah perkara-perkara atau isu-isu yang tidak berkaitan (extraneous) dan bukan relevan untuk menunjukkan beliau mempunyai kepentingan yang boleh dikaveatkan. Sebaliknya, kebanyakkan perkara-perkara yang dibangkitkan oleh responden di afidavit-afidavit beliau hanya mengaburi pertimbangan keadilan dan mengelakkan mahkamah ini daripada menimbang fakta-fakta yang relevan bagi maksud permohonan ini. ('The net result was that in the cloud of dust that the ingenuity of counsel had created, all concerned, including the court, has lost sight of the proverbial wood from the trees', per Gopal Sri Ram JCA dalam kes *Abdul Rahim bin Aki v Krubong Industrial Park (Melaka) Sdn Bhd & Ors* [1995] 3 MLJ 417).

[35] Pendek kata, tiga peringkat atau ujian yang harus dilakukan oleh seorang hakim dalam permohonan seperti lampiran 1 dalam kes ini dan seperti yang dinyatakan dalam kes *Luggage Distributors (M) Sdn Bhd* dan diikut dalam kes *Goh Paik Swan v Ng Choo Lum* [1996] 3 MLJ 437 adalah seperti berikut:

(1) sama ada responden telah mendedahkan satu kepentingan yang boleh dikaveatkan di atas harta tersebut;

(2) jika demikian, sama ada keterangan yang telah dikemukakan untuk menyokong tuntutannya di atas kepentingan yang boleh dikaveatkan di atas harta tersebut telah mendedahkan satu persoalan yang serius untuk dibicarakan;

(3) jika demikian, sama ada imbangan keadilan memihak kaveat itu dikekalkan.

[36] Selepas meneliti secara menyeluruh fakta-fakta, keadaan dan situasi kes ini dan khususnya alasan yang digunakan oleh responden untuk memasukkan kaveat tersebut melalui Borang 19B Kanun Tanah Negara, mahkamah ini berpendapat responden tidak menunjukkan alasan yang mencukupi untuk

mengekalkan kaveat tersebut. Alasan yang ditunjukkan atau dikemukakan di Borang 19B adalah penting untuk menentukan sama ada kaveat yang dimasukkan oleh pengkaveat seharusnya dikekalkan atau tidak (rujuk kes-kes *United Malayan Banking Corporation Bhd v Development and Commercial Bank (Ltd) Bhd* [1983] 1 MLJ 165, *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782 dan *Luggage Distributors (M) Sdn Bhd lwn Tan Hor Teng & Anor*).

[37] Mahkamah ini berpendapat bahawa responden (a) tidak mendedahkan satu kepentingan yang boleh dikaveatkan di atas harta tersebut, (b) keterangan yang telah dikemukakan oleh responden untuk menyokong tuntutannya di atas kepentingan yang boleh dikaveatkan di atas harta tersebut tidak mendedahkan satu persoalan yang serius untuk dibicarakan dan (c) imbangan keadilan memihak kaveat itu tidak dikekalkan. Sebaliknya dan sekiranya, mahkamah ini tersilap di atas ujian pertama, mahkamah berpendapat bahawa alasan yang dibangkitkan dalam permohonan untuk memasukkan kaveat (Borang 19B) tidak menunjukkan fakta-fakta atau persoalan yang serius dan perlu dibicarakan dalam satu perbicaraan penuh. Seterusnya, sekiranya mahkamah ini tersilap di atas ujian kedua, mahkamah ini berpendapat bahawa setelah meneliti alasan yang dibangkitkan di permohonan untuk memasukkan kaveat (Borang 19B) dengan fakta-fakta yang dibangkitkan oleh responden melalui afidavit-afidavit jawapan dan di atas keseluruhan fakta-fakta yang dibangkitkan oleh kedua-dua pihak imbangan keadilan memihak kepada pemohon dan kaveat tersebut di atas harta tersebut tidak harus dikekalkan.

[38] Kes-kes *Nagapushani v Nesaratnam & Anor* [1970] 2 MLJ 8, *Evelyn Tan v Tan Lim Tai* [1973] 2 MLJ 92 dan *Lau Choong Choo v Chou We Chuan* [1980] 1 MLJ 6 yang dirujuk oleh peguam responden harus dibezakan dengan fakta-fakta kes pemohon di hadapan mahkamah ini di mana kes-kes Singapura tersebut adalah difailkan di bawah s 55 Women's Charter Cap 57 Singapura dan keputusan diberi tentang bahagian hak suami isteri di atas harta perkahwinan selepas satu perbicaraan penuh di atas fakta-fakta dalam kes-kes itu. Keputusan dalam kes-kes tersebut tidak mengaitkan jenis permohonan pemohon seperti dalam kes ini atau peruntukan di bawah Kanun Tanah Negara tentang isu sama ada responden dapat memfailkan satu kaveat persendirian di atas harta tersebut dan mengekalkan kaveat tersebut tanpa menunjukkan alasan yang kukuh bahawa beliau mempunyai kepentingan untuk memasukkan kaveat tersebut. Oleh itu, mahkamah ini berpendapat kes-kes tersebut tidak membantu responden untuk mengekalkan kaveat persendirian tersebut.

[39] Di atas keseluruhan kes ini, mahkamah ini berpendapat bahawa imbangan kemudahan atau keadilan memihak kepada pemohon untuk membatalkan kaveat yang dimasukkan oleh responden.

[40] Akhirnya, mahkamah benarkan permohonan pemohon lampiran 1 seperti dipohon iaitu:

(1) Prayer 1 dibenarkan iaitu kaveat yang dimasukkan oleh responden ke atas harta tersebut dibatalkan.

(2) Prayer 2 dibenarkan dan Pendaftar Hak Milik Perak untuk memberi kesan dan mematuhi perintah ini. (Rujuk s 417 Kanun Tanah Negara).

(3) Prayer 3 dibenarkan di mana Pendaftar Mahkamah Tinggi diperintahkan untuk menafsirkan ganti rugi pemohon.

[41] Kos permohonan ini benarkan kepada pemohon dan ditanggung oleh responden dan sekiranya tidak ada persetujuan tentang amaun kos diperintahkan untuk ditaksirkan.

Permohonan dibenarkan.

Dilaporkan oleh Sivapragasam Kumaran